

EXHIBIT F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK OF

-----X
DANIEL RIVERA,

Plaintiff,

-against-

Civil No.
16cv7552

HOME DEPOT U.S.A., INC., -

Defendant.

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HOME DEPOT U.S.A., INC.,

Third-Party Plaintiff,

-against-

BRYAN'S HOME IMPROVEMENT CORP.,

Third-Party Defendant.

-----X

DATE: September 28, 2017

TIME: 10:58 a.m.

CONTINUATION OF THE EXAMINATION
BEFORE TRIAL of DANIEL RIVERA, the Plaintiff
herein, taken by the Defendants, pursuant to
Order, held at the offices of Ginarte, O'Dwyer,
Gonzalez, Gallardo, & Winograd, LLP, New York
before Marissa Eugenio, a Notary Public of the
State of New York.

1
2 A P P E A R A N C E S:
3

4 GINARTE, O'DWYER, GONZALEZ, GALLARDO, &
WINOGRAD, LLP

5 Attorneys for Plaintiff
225 Broadway, 13th Floor
6 New York, New York 10007
BY: MICHAEL EDELMAN, ESQ.

7
8 D'AMATO & LYNCH, LLP

9 Attorneys for Defendant: Home Depot
225 Liberty Street
10 New York, New York 10281
BY: HENRY C. DIEUDONNE, JR., ESQ.

11
12 CONNORS & CONNORS, P.C.

13 Attorneys for Defendant: Bryan's Home
Improvement Corp.
14 766 Castleton Avenue
Staten Island, New York 10310
15 BY: MICHAEL P. DECARLO, ESQ.
16

17 ALSO PRESENT:

18 MARCIAL ARAUJO/EIBER/SPANISH INTERPRETER
19
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S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between(among) counsel for the respective parties hereto, that: All rights provided by the C.P.L.R., including the right to object to any question, except as to form, or to move To strike any testimony at this(these) examination(s), are reserved, and, in addition, the failure to object to any question or to move to strike any testimony at this(these) examination(s) shall not be a bar or waiver to make such motion at, and is reserved for the trial of this action;

IT IS FURTHER STIPULATED AND AGREED by and between(among) counsel for the respective parties hereto, that this(these) examination(s) may be sworn to by the witness(es) being examined, before a Notary Public other than the

S T I P U L A T I O N S (Cont'd)

Notary Public before whom this(these)
examination(s) was (were) begun; but the
Failure to do so, or to return the original
Of this (these) examination(s) to counsel,
Shall not be deemed a waiver of the rights
Provided by Rules 3116 and 3117 of the
C.P.L.R., and shall be controlled thereby;

IT IS FURTHER STIPULATED AND
AGREED by and between(among) counsel for the
Respective parties hereto, that this(these)
examination(s) may be utilized for all
Purposes as provided by the C.P.L.R.;

IT IS FURTHER STIPULATED AND
AGREED by and between(among) counsel for the
Respective parties hereto, that the filing and
certification of the original of this(these)
examination(s) shall be and the same hereby are
waived;

S T I P U L A T I O N S (Cont'd)

IT IS FURTHER STIPULATED AND
AGREED by and between(among) counsel for the
Respective parties hereto, that a copy of the
Within examination(s) shall be furnished to
Counsel representing the witness(es)
Testifying, without charge.

IT IS FURTHER STIPULATED AND
AGREED by and between(among) counsel for the
respective parties hereto, that all rights
provided by the C.P.L.R., and Part 221 of the
Uniform Rules for the Conduct of Depositions,
including the right to object to any question,
except as to form, or to move to strike any
testimony at this examination is reserved; and
in addition, the failure to object to any
question or to move to strike any testimony at
this examination shall not be a bar or waiver
to make such motion at, and is reserved to, the
trial of this action.

1 Daniel Rivera

2 M A R C I A L A R A E U J O, called as the
3 interpreter in this matter, was duly sworn
4 by a Notary Public of the State of New
5 York to accurately and faithfully
6 translate the questions propounded to the
7 witness from English into Spanish and the
8 answers given by the witness from Spanish
9 into English.

10 DANIEL RIVERA, called as a witness, having been
11 first duly sworn by a Notary Public in and
12 of the State of New York, was examined and
13 testified as follows:

14 EXAMINATION BY

15 MR. DIEUDONNE:

16 Q. Good morning, Mr. Rivera.

17 A. Good morning.

18 Q. We are continuing your deposition
19 today again. My name is Henry Dieudonne. I'm
20 from the firm of D'Amato & Lynch. We represent
21 Home Depot against which you've brought a
22 lawsuit and the same instructions I gave you
23 yesterday apply that is let the interpreter
24 finish his interpretation before answering so
25 as not to confuse him and in turn confuse me.

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Daniel Rivera

Even though you may speak and understand some English please keep your answers in Spanish only through the interpreter.

A. Okay.

Q. If you have a question, if you need a break let me know.

A. Okay.

Q. Do you have a pending appointment with Dr. Ratzker that is the doctor who performed your neck surgery?

A. Yes.

Q. When is your next appointment with Dr. Ratzker?

A. I don't remember. I changed because I had an appointment with Dr. Colon. I don't remember if it was the 27th, but it's going to be soon already.

Q. When was the last time you saw Dr. Colon?

A. It was around the 28th, the 27th, I don't remember.

Q. Of which month?

A. Last month.

Q. When you last saw Dr. Colon did

1 Daniel Rivera

2 you have any complaints?

3 A. Yes, always pain everything.

4 Q. You complained about pain to which
5 part of your body?

6 A. The whole body, the left side, the
7 foot, and tingling on my left foot and left
8 arm.

9 Q. When you say that you complained
10 about your foot did you complain about your
11 left foot?

12 A. Yes, the last time I saw
13 Dr. Colon.

14 Q. Do you have any pending
15 appointments with the doctor who performed your
16 back surgery?

17 A. Yes.

18 Q. When is your next appointment with
19 the doctor who performed the back surgery?

20 A. I haven't seen him. I see him
21 every month, but it's soon because they'll let
22 me know.

23 Q. When did you last see the doctor
24 who performed the back surgery?

25 A. It was the month that passed.

1 Daniel Rivera

2 Q. Did you have any complaints when
3 you last saw him?

4 A. Yes, always pain.

5 Q. When you say pain is it back pain
6 or something else?

7 A. The pain in the back, the neck, my
8 arm my foot.

9 Q. Do you have a pending appointment
10 with the doctor who performed your left knee
11 surgery?

12 A. Yes.

13 Q. When is that?

14 A. This month. This same month we're
15 in.

16 Q. When you last saw the doctor that
17 performed your left knee surgery did you have
18 any complaints?

19 A. Always the one who has seen me has
20 been Dr. Colon the other doctors the one that
21 operated the knee the month that passed I
22 didn't see him, but I always see Dr. Colon.

23 Q. When was the last time you saw the
24 doctor that performed your left knee surgery?

25 A. It was like around four months. I

1 Daniel Rivera

2 don't remember well.

3 Q. Now, with respect to your left
4 knee were you told by either the doctor who
5 performed your left knee surgery or Dr. Colon
6 that you would need additional surgery to your
7 left knee?

8 A. They're now in the process of
9 therapy always. They haven't told me anything
10 as of now.

11 Q. Were you told by the doctor who
12 performed your next surgery or Dr. Colon that
13 you would need additional neck surgery?

14 A. Now no because I have to continue
15 therapy.

16 Q. With respect to your back have you
17 been told by the doctor who performed your back
18 surgery or Dr. Colon that you will need
19 additional surgery?

20 A. Not now just check ups and
21 therapy.

22 Q. How many days weekly do you have
23 therapy?

24 A. Three days a week.

25 Q. That is at Dr. Colon's office?

1 Daniel Rivera

2 A. Yes. Some days I don't go because
3 I feel a lot of pain. I do what I can at home
4 therapy.

5 Q. How long will your physical
6 therapy regiment last?

7 A. One hour.

8 Q. But overall how long will you have
9 physical therapy for?

10 A. The moment when I'm there or when?

11 Q. When will it stop; when will the
12 physical therapy regiment stop all together?
13 Have you been told?

14 A. I'm in the process the whole time
15 no.

16 Q. So you pretty much have been
17 receiving physical therapy shortly after the
18 accident of August 22, 2015, to the present?

19 A. Yes. Could I get a moment, please?
20 (Whereupon, a break was taken.)

21 Q. Now, has the physical therapy
22 regiment that you've received so far diminished
23 your overall pain?

24 MR. EDELMAN: Objection to
25 anything he answered yesterday, he can

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Daniel Rivera

answer.

A. The pain always continues I used to not move me arm, but I move it a little.

Q. Which arm?

A. My left.

Q. But overall has the physical therapy reduced your bodily pain or is it still the same?

A. It's the same. The only thing it helps me a little bit to move my body, but the pain is always the same.

Q. Will you be receiving any steroid injections?

A. Possibly, yes.

Q. Were you told by Dr. Colon that you'd be receiving any more steroid injections?

A. For the moment he hasn't said anything.

Q. At your home do you live on the ground floor or the second floor?

A. First.

Q. Do you have to go up a step or steps to reach your apartment that is from the street?

1 Daniel Rivera

2 A. No, its difficult that's why I
3 always look for the first floor.

4 Q. My question was to get to your
5 apartment on the first floor from the street do
6 you have to climb up a set of steps?

7 A. No.

8 Q. Now, up until the time of your
9 accident in Yonkers how were you paid by your
10 employer Bryan's; was it cash, check, or
11 something else?

12 A. Cash.

13 Q. Were you paid weekly, biweekly, or
14 monthly?

15 A. Every fifteen days.

16 Q. How much were you paid every
17 15 days by your employer?

18 A. They'll give me \$180 per day,
19 15 days we would receive payment of \$2,160. We
20 would do it in 12 days the 15.

21 Q. What do you mean by that?

22 A. The process of 15 days they'll pay
23 me for 11 days, 12 days.

24 Q. Now, since your accident of
25 August 22, 2015, have you received Worker's

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Daniel Rivera

Compensation Benefits?

A. Yes.

Q. You've received those
compensations in terms of check?

A. Yes.

Q. Do you receive those checks from
Worker's Comp weekly, biweekly, monthly, or
something else?

A. Weekly, but every 15 days.

Q. So you actually get the check
every 15 days?

A. Yes.

Q. To date as I speak to you now are
you still receiving Worker's Compensation
checks?

A. Yes.

Q. How much do you get on a biweekly
basis from Work Comp?

A. 1,200.

Q. When did you first start to
receive those checks from Work Comp?

A. I think it was in December.

Q. Of what year?

A. 2015.

1 Daniel Rivera

2 Q. Initially when you started
3 receiving checks from Work Comp in December of
4 2015 how much were you getting biweekly?

5 A. They'll give me 533 per week, but
6 they will always come every 15 days.

7 Q. Now, other than Worker's
8 Compensation are you getting financial
9 assistance from the State of New Jersey?

10 A. No.

11 Q. Are you getting food stamps from
12 the State of New Jersey?

13 A. No.

14 Q. Are you getting rental assistance
15 from the State of New Jersey?

16 A. No.

17 Q. Are you getting any sort of
18 assistance from Federal Government?

19 A. No, the only thing I get is
20 compensation.

21 Q. Have you been told by any of your
22 treating physicians that you're permanently
23 disabled?

24 A. They told me that it's a process.
25 It's going to be very long because there hasn't

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Daniel Rivera

been a change.

Q. Who told you that?

A. Dr. Colon.

Q. Since your accident of August 22, 2015, have you had to hire domestic help?

A. My family helps me when I want to go to the bathroom, whatever, things like food because I can't do anything. My family helps me with everything, my wife, my children.

Q. Your wife cooks for you?

A. Yes.

Q. Does she help you with bathing, showering?

A. Yes.

Q. Do you also need help dressing and undressing yourself?

A. Yes.

Q. After your accident did you return to the site where it happened in Yonkers for any reason?

A. I went with someone, an attorney to take photos.

Q. After your accident at any point did you fill out an accident report with the

1 Daniel Rivera

2 police?

3 A. No.

4 Q. Did the police speak to you at all
5 after your accident at any point?

6 A. I told you yesterday I woke up and
7 opened my eyes, someone spoke to me in the
8 hospital, but I didn't know if it was the
9 police or the ambulance.

10 Q. What did that person talk to you
11 about at the hospital?

12 A. I only remember that they asked
13 for my name. I don't remember the rest.

14 Q. Now, are there any activities that
15 you would perform before August 22, 2015, that
16 you can no longer perform?

17 A. Everything that I used to do has
18 been affected in my physical -- I could carry
19 my children now I can't do nothing.

20 Q. Anything else?

21 A. The job I used to do I had no
22 limits, now I have no capacity to do anything,
23 and before my accident my boss they would
24 prefer me because I was such a great worker,
25 they'll send me to do whatever and I would

1 Daniel Rivera

2 never say no. At the moment I don't know -- I
3 can't do anything.

4 Q. Now, before leaving your home
5 country of El Salvador what type of work did
6 you do in El Salvador?

7 A. I used to grow corn, beans, when
8 the things would come out the plants there is
9 one that I would plant at the beginning of
10 winter of August and then there are others that
11 you could take them out every year. When the
12 winter is over I would harvest and I would
13 always keep myself busy working.

14 Q. So back in your home country you
15 only did agricultural work?

16 A. Yes, we would close the tree of
17 wood.

18 Q. What do you mean by that?

19 A. We'll call it like a room here is
20 a two by four.

21 Q. I'm trying to understand what you
22 mean by that.

23 A. No that I used to did all of that.

24 Q. You used to cut trees?

25 A. Yes.

1 Daniel Rivera

2 Q. For what purpose?

3 A. We would occupy so that we could
4 build. My father left an inheritance. There was
5 a lot of wood that we would use, someone would
6 look for it, and I would make it two by four.

7 Q. What would you use the wood for?

8 A. In our country they use it for --
9 they call it like the beams where the wall ends
10 and that continues like this so they would put
11 the ceiling.

12 Q. Did you have construction
13 experience back in El Salvador?

14 A. I would help, you know, when I had
15 time as a helper.

16 Q. Would you help as a helper on
17 construction sites?

18 A. Yes, to do mixing.

19 Q. What would you be mixing?

20 A. We would mix to attach the block
21 cement and to mix it with sand that's what I
22 used to do.

23 Q. Do you have any pending
24 appointments with the Worker's Compensation
25 Board?

1 Daniel Rivera

2 A. Not for the moment. We went to one
3 I think it's a month ago. I don't remember we
4 went to one a month ago.

5 Can I get up for a moment?

6 Q. Sure.

7 MR. DIEUDONNE: Off the record.

8 (Whereupon, at this time, a
9 discussion was held off the record.)

10 EXAMINATION BY

11 MR. DECARLO:

12 Q. Good morning, Mr. Rivera. My name
13 is Michael DeCarlo. I'm with the firm of
14 Connors and Connors. We represent Bryan's Home
15 Improvement Corp. If you don't hear a question
16 or if you don't understand a question let me
17 know and I'll repeat it or rephrase it for you
18 so you understand. Do you understand?

19 A. Okay.

20 Q. Is your full name Daniel Rivera
21 Martinez?

22 A. Yes.

23 Q. Do you ever use your full name or
24 do you just go by Daniel Rivera?

25 A. Some places Daniel Rivera first

1 Daniel Rivera

2 name if not it's Daniel Francesco Rivera
3 Martinez.

4 Q. Have you ever been known by any
5 other names?

6 A. No.

7 Q. What is your present height and
8 weight?

9 A. Exactly I don't remember. It would
10 be 165 centimeters. I don't know exactly.

11 Q. Could you give me an estimate of
12 your present weight?

13 A. I haven't weighed myself.

14 Q. Can you give me an approximation
15 of your weight at the time of the accident?

16 A. I used to weigh 150.

17 Q. Did you travel to the site where
18 the accident happened on the day of the
19 accident and on the day before the accident in
20 a van that was driven by Alonzo?

21 A. Yes, first day.

22 Q. Was all of the equipment that you
23 used on this job where the accident happened
24 was it all contained in the van?

25 A. Yes, in the van.

1 Daniel Rivera

2 Q. You mentioned that a harness was
3 one of the things that was used on the job.
4 Describe the harness for me.

5 A. The harness that's always used
6 that has like a lock in the back to lock the
7 harness when you're working you tie it.

8 Q. Was it a harness that you wore
9 around your chest?

10 A. No everything, the harness had
11 normal harness that you use, you know.

12 Q. What part of your body did you
13 wear the harness on?

14 A. The harness has a pocket where you
15 put in your feet and the whole body and the
16 belt.

17 Q. Did you use the harness on the
18 first day you were at the job at 58 Cook
19 Avenue?

20 A. Yes.

21 Q. Where did you attach the harness
22 when you used it?

23 MR. EDELMAN: Which day?

24 MR. DECARLO: The first day.

25 A. Before we continued to work a

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Daniel Rivera

ladder was extended to get to the roof, the one that's up top, the last one, we used aluminum that we used special to screw up top and it has a lock so you would put it like this.

Q. What was it that connected the harness to the aluminum thing that you locked?

A. The harness has a different lock below and up.

Q. Was there a rope that was used to connect your harness to the top roof where the aluminum lock was?

A. Yes, it was special to use with the harness.

Q. Did you have the harness on at the time of the accident?

A. Yes.

Q. Was it attached to the top roof where the aluminum lock was?

MR. EDELMAN: Objection to form, actually foundation.

MR. DECARLO: You could answer. Counsel, he can answer?

MR. EDELMAN: Above my objection, yes.

1 Daniel Rivera

2 A. The day of my accident?

3 Q. Yes.

4 A. Yes. That was a process after the
5 morning before we started to work on the left
6 side and the right side to the back part where
7 we reached from the back part to strip that's
8 what was done the rest of the morning. When
9 Alonzo was going to go he told me what ladder I
10 was going to use possibly between 12 and
11 16 feet in extension half of a 32. He left it
12 at a certain place in the middle of two houses
13 that's when I climbed up the ladder that he put
14 on and I had to go down through the ladder that
15 we used at the beginning before in the back. I
16 came out through the part on the other side so
17 that I could use the ladder in the back the one
18 he told me through the ladder that he put up.

19 Q. Can I have my last question read
20 back please?

21 (The record was read as
22 requested.)

23 Q. Mr. Rivera, you indicated earlier
24 that the accident occurred some time before
25 lunch time; is that correct?

1 Daniel Rivera

2 A. Yes.

3 Q. Approximately what time did you
4 arrive on the job on the morning of the
5 accident?

6 A. In the morning we started after
7 eight. We were in the back working.

8 Q. Did you unload the equipment from
9 the van when you arrived at 58 Cook Avenue?

10 A. No, the equipment was there.

11 Q. What equipment was there when you
12 arrived at the site on the day of the accident?

13 A. The ladder was there the one that
14 we used in the back that was already extended
15 all the way up in the ceiling that's why we
16 just had to wear the harness only in the
17 morning.

18 Q. I want you to tell me all of the
19 equipment that you had on the job site on the
20 morning of the accident, you said there was a
21 ladder; what else was there?

22 A. What I used to use?

23 Q. I want you to tell me what it was
24 that you used. Hold on a second, let me
25 interrupt you. I don't want to know just what

1 Daniel Rivera

2 you used I want to know all of the equipment
3 that was at the site?

4 A. What was there was all the
5 materials that Home Depot had taken that's the
6 area all the paper that's used a worker that
7 was around. I had to remove the part for
8 because they'll leave it like this in the area
9 where people walk. He went to the back part and
10 the whole equipment the ladders that were used
11 that's what was there.

12 Q. Were you using any equipment on
13 the day of the accident that was supplied by
14 Home Depot?

15 A. A vest.

16 Q. What type of a vest?

17 A. Vest that represented Home Depot.

18 Q. Did the vest have anything to do
19 with the harness?

20 A. No, it was a vest only.

21 Q. Just to identify that Home Depot
22 was on the job?

23 A. Yes.

24 Q. You indicated yesterday the
25 equipment that you were using on the site you

1 Daniel Rivera

2 mentioned ladders, you mentioned the shovel, I
3 don't recall what else you mentioned, did you
4 mention anything other than the ladders and the
5 shovel?

6 MR. EDELMAN: Objection to the
7 form.

8 A. The shovel that was used up top in
9 the morning. We would use it up top in the
10 ceiling.

11 Q. Did you also have rope that you
12 used on the job?

13 A. Yes before my accident. I would
14 always work tied with the rope from the harness
15 so we could protect ourselves from, you know, a
16 fall or something else so that we would work
17 taking out the old roof.

18 Q. On the day of the accident before
19 the accident happened were you wearing a
20 harness?

21 MR. EDELMAN: Objection to form.
22 What time?

23 A. Before yes we would always use it
24 in the mornings.

25 Q. While you had the harness on on

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Daniel Rivera

the morning of the accident before the accident happened was the harness tied, was there a rope tied to the harness?

MR. EDELMAN: Objection to the form.

A. Yes -- but well, in the moment up top where I was we were tied then Alonzo told me to come down to do the job in the area where the accident happened. He showed me the ladder because he was not there. The moment he left and I had to let go so that I could go down and go to the area where he told me to go and then when I took the ladder that he told me to take and I went up and used the one that he put up grabbing the ladder with my left hand I went up up the ladder that he put up with the second one grabbing it with my hand, with the right hand, I was holding on to the one Alonzo put up. Everything happened at the moment I used to trust it, you know, I trusted it because he put it up. The bottom of the ladder was not tied with anything. When I was in the process of I put the ladder in the fence, the second one, that's when the ladder that Alonzo put up

Daniel Rivera

1 moved towards my right side and I fell on my
2 left side and I grabbed the ladder with the
3 left hand approximately like the fence has
4 between four and five feet. I fell from the
5 height of seven feet. When I was down there
6 like everything happened that's when I felt the
7 shock, the electric shock, in my whole left
8 side of my body from there. I don't remember
9 anything.
10

11 Q. When Alonzo spoke to you and told
12 you that he wanted you to use the ladder that
13 he set up were you on one of the roofs of the
14 building?.

15 A. I was up there.

16 Q. Was he on the ground when he was
17 speaking to you?

18 A. Yes. He was putting up the ladder
19 the one that he put up first it extended over
20 the fence.

21 Q. When he spoke to you were you
22 wearing a harness that was attached to the
23 building?

24 A. The harness -- like I told you I
25 let go because I couldn't use it because I came

1 Daniel Rivera

2 down.

3 Q. I understand that, but what I want
4 to know is when Alonzo was speaking to you and
5 explaining to you what he wanted you to do with
6 the ladder that you were setting up, were you
7 wearing a harness that was attached to the
8 ceiling that would've prevented you from
9 falling?

10 MR. EDELMAN: Objection.

11 A. It was a harness, you know, normal
12 one wears it where there is a rope secured up
13 there where you lock the rope -- what a
14 co-worker did I'm going to throw you the rope
15 because I was going to go up that was the
16 process I was doing.

17 Q. So when Alonzo explained to you
18 what he wanted you to do one of your co-workers
19 removed the rope that was locked to the top of
20 the building so that you could go down to the
21 ground?

22 MR. EDELMAN: Objection to the
23 form.

24 A. No because we put the rope for
25 each worker that would always be locked hanging

1 Daniel Rivera

2 and then I would remove it from the harness so
3 that I could go down.

4 Q. So when Alonzo explained to you
5 what he wanted you to do did you remove the
6 rope from your harness and then go down to the
7 ground?

8 A. The rope remained in the same
9 place. What I did was take it off from the
10 harness and go down to the floor through the
11 back so that I could get to the area where he
12 told me to work to take the ladder he told me
13 to take.

14 Q. At the time that you began to
15 climb the ladder that Alonzo had set up were
16 you wearing a harness that did not have a rope
17 attached to it?

18 A. No because I was using the ladder
19 I didn't use it.

20 Q. I'm not sure that you answered the
21 question. The question is when you were
22 climbing the ladder that Alonzo told you he
23 wanted you to use were you wearing a harness
24 that did not have a rope attached to it; yes or
25 no?

1 Daniel Rivera

2 A. No because the process of going up
3 you cannot use it. The rope, the harness, I was
4 going to use it when I was going to go to the
5 process, that's when he put the pillow up top
6 the cushion and the flat surface that's was my
7 thing that I explained yesterday to put the
8 ladder against the fence -- excuse me, the
9 cushion to puts it up so I could work in front
10 of the doorman.

11 Q. So I just want to make sure I
12 understand what you're saying. Are you saying
13 that at the time that you began to climb the
14 ladder that Alonzo had placed you were wearing
15 a harness that did not have a rope attached to
16 it; is that true?

17 MR. EDELMAN: Objection to form.

18 A. A harness because I used it in the
19 morning when we got there before we would put
20 the harness on the rope the harness we use it
21 when were we in the process when we were
22 working already.

23 Q. Would it be correct to say that
24 while you were working at 58 Cook Avenue that
25 you would wear the harness with the rope

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Daniel Rivera

attached to it and with the other end of the rope locked on top of the building while you were working, but not while you were going up and down ladders; is that correct?

MR. EDELMAN: Objection to the form.

A. No because the ladder that Alonzo put up is the first time of me going up there before I haven't gone up there.

Q. Before the accident happened did you wear a harness with a rope attached to it and the rope attached it to the top of the building when you would go up and down ladders or was it just for while you were working on the roof that you wore the harness?

MR. EDELMAN: Objection to form.

A. When I would work on the roof.

Q. At the time that you fell from the ladder were you closer to the bottom of the ladder or closer to the top of the ladder?

A. Excuse me, the ladder I put up?

Q. The ladder that Alonzo put up.

A. It was in the process of putting the second ladder in the fence and because

1 Daniel Rivera

2 Alonzo put a rope and tied on the roof it was
3 in the fence, but he didn't secure it well so
4 the ladder moved. Everything happened in the
5 moment and the process where he put the ladder
6 it moved from where I was standing almost at a
7 level from the fence at the end of the fence
8 when I fell and took the ladder with my left
9 hand and I fell on my left hand side and that's
10 when everything happen in the moment I fell.
11 When I fell I felt the electric shock, my whole
12 left side of the body. Then I was left in the
13 dark I didn't see from then.

14 Q. Did the accident involve you
15 falling off the ladder that Alonzo had set up?

16 MR. EDELMAN: Objection to the
17 form.

18 A. Yes, that's the one that moved.

19 Q. When you fell from the ladder were
20 you closer to the bottom of the ladder or
21 closer to the top of the ladder?

22 A. In the process at the end of the
23 fence.

24 Q. Were you closer to the top or
25 closer to the bottom of the ladder?

1 Daniel Rivera

2 MR. EDELMAN: Alonzo's ladder?

3 A. The ladder that Alonzo put up. It
4 was in the process up there in the fence in the
5 same level as the fence and because the ladder
6 that Alonzo put up up there in the fence was
7 between four, five feet.

8 INTERPRETER: Let me get some
9 water.

10 MR. DIEUDONNE: Sure.

11 A. Something of me that hasn't been
12 asked I always drag my feet. I don't have
13 strength in my foot that's very difficult to
14 walk. I mess up my shoes because I drag my
15 feet.

16 MR. EDELMAN: All indicating left
17 foot.

18 Q. Mr. Rivera, the problem with your
19 left foot did that result from the accident?

20 A. Yes.

21 Q. Are you ready to resume? If you
22 want to stand that's fine.

23 Sir, at the time that the ladder
24 that Alonzo had set up began to move to your
25 right did have you two feet on one of the

1 Daniel Rivera

2 results of the ladder?

3 A. It was on top of the ladder at the
4 moment when I was passing the fence. When
5 Alonzo's ladder moved and how it happened at
6 the same time when the second ladder I took it
7 that it was falling on my left side everything
8 was when it fell. It was on the roof, the flat
9 roof, that I felted the electric shock my whole
10 left side.

11 Q. When the ladder that Alonzo had
12 set up began to move were you already in the
13 process of getting off that ladder?

14 MR. EDELMAN: Or something else?
15 Objection to form.

16 A. I was in the process always of I
17 put the second ladder in the fence like
18 everything happened in the moment that's when
19 the ladder moved I was at the end of the fence.

20 Q. I didn't get what he just said? I
21 was what?

22 THE INTERPRETER: I was stopped at
23 the end of the fence.

24 A. The ladder that was against the
25 fence of Alonzo I was in the ladder I had my

1 Daniel Rivera

2 feet on the ladder, but I was at the end of the
3 fence that was the whole process everything
4 happened in the moment. When I fell that ladder
5 moved and I fell on my left hand side I was on
6 the floor that's when I fell and my electric
7 shock --

8 Q. Mr. Rivera, I want to go back to
9 the point where you first got on the ladder
10 that Alonzo set up when you began to climb that
11 ladder were you carrying another ladder?

12 A. It was the ladder that he told me
13 to bring up the second one.

14 Q. So you were carrying the ladder
15 while you were going up the ladder that Alonzo
16 had set up, correct?

17 A. Yes, the ladder he told me I was
18 going up the second ladder.

19 Q. How were you carrying that, were
20 you carrying that ladder in one hand or two
21 hands?

22 A. No, I couldn't use two hands
23 because with my left hand I was going up on the
24 right and the right I was holding up I was
25 holding on to Alonzo's ladder.

1 Daniel Rivera

2 Q. As you were going up Alonzo's
3 ladder were you holding your ladder with the
4 right hand, that was Alonzo's ladder with your
5 right hand, and you were carrying the other
6 ladder in your left hand?

7 A. I don't know if you understand. I
8 was holding on to the second ladder. I had it
9 in my left hand I held on to the middle of the
10 ladder so that I could go up the ladder that
11 Alonzo put up and because I couldn't use both
12 of my hands I had to occupy one so that I hold
13 on going up and using Alonzo's ladder.

14 Q. As you were climbing Alonzo's
15 ladder were there any workers either on the
16 flat roof or on the roof above the flat roof?

17 A. No. All of them were in the back.

18 Q. The back on the building or on the
19 ground in the back?

20 A. There were others doing new
21 roofing the new one.

22 Q. Would it have been possible for
23 one of those workers to pull the ladder that
24 you were carrying up to the flat roof if you
25 had tied a rope to the ladder that you were

1 Daniel Rivera

2 carrying?

3 MR. EDELMAN: Objection to form.

4 A. Supposedly Alonzo put it up he had
5 to secure it well. He put the rope, but he
6 didn't secure it well.

7 Q. Mr. Rivera, I'm not talking about
8 Alonzo. I'm talking about the ladder that you
9 were carrying up to the flat roof. Would it
10 have been possible to tie a rope to the ladder
11 that you were carrying, bring the rope up to
12 the flat roof, or to the roof above the flat
13 roof and have one of the workers pull the
14 ladder that you were carrying up to the flat
15 roof?

16 MR. EDELMAN: Objection to the form
17 and foundation to the question.

18 A. They always like to do the job.
19 They should all have someone help you. What
20 they care about is that they do the job and
21 then like you said go up the ladder the second
22 one I put the ladder up where you go up.

23 Q. Was there any reason why instead
24 of carrying the ladder up, Alonzo's ladder, is
25 there any reason why you could not have tied a

1 Daniel Rivera

2 rope to a ladder that you were carrying and
3 then climb up Alonzo's ladder and then pull the
4 ladder that you were carrying up to the flat
5 roof?

6 MR. EDELMAN: Objection to the form
7 and foundation.

8 A. No because there is no more ropes
9 only the one that is used up top that's the
10 reason we cannot take the rope.

11 Q. I want to go back again to the
12 time when you began to climb Alonzo's ladder.
13 Right before the accident happened did you
14 reach the point where you were ready to step
15 off Alonzo's ladder and put one of your legs
16 over the railing on the flat roof?

17 MR. EDELMAN: Objection to the
18 form.

19 A. Everything happened at the moment,
20 but I remember I was in a process of passing
21 the fence. I was standing there on the ladder
22 that Alonzo put like everything happened in the
23 moment. What I remember is that I fell when
24 Alonzo's ladder moved to my right side.
25 Everything happened in the moment and I fell.

1 Daniel Rivera
2 towards the left side and I took the second
3 ladder with my left hand when I was on the
4 floor on the flat floor when I fell when I fell
5 all the electric shock.

6 Q. Mr. Rivera, I'm going to ask you a
7 question and I want you to answer the question
8 with yes or no. When Alonzo's ladder began to
9 shift did you have both of your feet on
10 Alonzo's ladder?

11 A. Yes, like I told you.

12 MR. EDELMAN: He said yes or no.

13 A. Yes.

14 Q. Was it while you had your two feet
15 on the ladder and the other ladder in your left
16 hand that Alonzo's ladder shifted to your
17 right?

18 MR. EDELMAN: Objection to the
19 form.

20 A. I already put the ladder, the
21 second one, against the fence that it was more
22 towards the flat roof.

23 Q. When you say you had already put
24 the second ladder against the fence are you
25 referring to the railing near where you marked

1 Daniel Rivera

2 O on Defendant's Exhibit? Is this the fence on
3 Exhibit D?

4 A. Everything was on my left side. I
5 put it against the fence.

6 MR. EDELMAN: He's indicating the
7 area the fence area.

8 MR. DECARLO: With the railing on
9 the flat roof, correct?

10 MR. EDELMAN: Exactly.

11 Q. When you leaned the second ladder
12 against the rail on the flat roof was one part
13 of the ladder on the flat roof and the other
14 part of the second ladder leaning on the
15 railing?

16 A. Like three feet outside from the
17 railing.

18 Q. What I want to know is was the
19 second ladder were the legs of the second
20 ladder on the flat roof at the time that
21 Alonzo's ladder began to shift?

22 A. Like everything was at the moment.
23 I put the ladder in the fence and everything
24 happened in the moment.

25 Q. I understand that you put the

1 Daniel Rivera

2 second ladder on the fence, what I want to know
3 is was part of the ladder on the flat roof and
4 was the rest of the ladder leaning on the
5 railing?

6 MR. EDELMAN: Objection to the
7 form.

8 A. The rest was against the flat roof
9 and how that process was that I was putting the
10 ladder when it moved.

11 Q. At the time that Alonzo's ladder
12 began to move where were your two hands?

13 A. I was holding on to Alonzo's
14 ladder.

15 Q. With your left hand or both hands?

16 A. At the moment like everything
17 happened in the moment that I was in the
18 process putting up the ladder like I told you
19 everything happened in the moment that Alonzo's
20 ladder moved when I fell --

21 Q. What I want to know is when
22 Alonzo's ladder began to move where were both
23 of your hands?

24 MR. EDELMAN: Objection to the
25 form.

1 Daniel Rivera

2 A. It was holding on to Alonzo's
3 ladder.

4 Q. Both hands?

5 A. The process like I told you I was
6 holding on only with my right hand and like
7 everything happened in the moment.

8 Q. I understand that you said while
9 you were climbing the ladder your right hand
10 was holding on to Alonzo's ladder and your left
11 hand was holding the second ladder and you
12 indicated that at about the time that Alonzo's
13 ladder began to shift you had leaned the second
14 ladder against the railing that was on the flat
15 roof at the time that Alonzo's ladder began to
16 move where was your right hand?

17 MR. EDELMAN: Objection to the
18 form.

19 A. Yes, everything happened in the
20 moment. I put the ladder there.

21 Q. Your right hand, where was your
22 right hand when Alonzo's ladder began to move?

23 MR. EDELMAN: Same objection.

24 A. It was always grabbing on to the
25 ladder.

1 Daniel Rivera

2 Q. To Alonzo's ladder?

3 A. Alonzo.

4 Q. Where was your left hand at the
5 time that Alonzo's ladder began to shift?

6 A. It was in that process to put the
7 ladder against the fence like I told you
8 everything happened in the moment.

9 Q. So at the time that Alonzo's
10 ladder began to shift was your left hand in the
11 process of placing the second ladder on the
12 flat roof and leaning against the railing?

13 A. Yes because I couldn't let go with
14 my right.

15 Q. When you were placing the second
16 ladder on the flat roof did you do that from
17 the left side of the ladder or the right side
18 of the ladder?

19 MR. EDELMAN: Or middle? Or
20 something else?

21 A. Everything was in the left side.

22 Q. So would it be correct to say then
23 that when you were putting the second ladder on
24 the flat roof you did so with your left hand on
25 the left side of the ladder?

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Daniel Rivera

MR. EDELMAN: Objection to the
form.

A. Yes because I was always carrying
it with my left hand I couldn't move to another
side.

Q. When you were putting the second
ladder on the flat roof were both of your feet
on the same run of the ladder?

A. Yes, because in that process to
put the ladder that's when everything happened.

Q. You were not climbing Alonzo's
ladder when the ladder shifted you were
standing on one run of the ladder, correct?

MR. EDELMAN: Objection to form.

A. Yes I was in the ladder Alonzo's
ladder, but it was during the process.

Q. During the process of putting the
second ladder on the flat roof, correct?

A. Yes.

Q. Was Alonzo's ladder tied with a
rope to the railing that was on the flat roof?

A. Yes, Alonzo had put the rope.

Q. Can you describe what part of
Alonzo's ladder was tied to the railing?

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Daniel Rivera

A. He tied it from the step, from the ladder, from the fence at top at the end.

Q. One of the rungs of the ladder was tied to the railing of the flat roof?

A. Repeat that question again?

Q. Was one of the rungs of the ladder tied to the railing that was on the float roof?

A. Yes, Alonzo had tied it, hugging it, both corners were grabbing the step and because he put it up I thought it was secured but no.

Could I get up for a moment?

Q. Sure.

MR. DECARLO: Let's mark this.

(Whereupon, Defendant's Exhibit G, photograph, was marked for identification, as of this date by the Reporter.).

Q. Mr. Rivera, I'm going to show you what has been marked as Exhibit G. What I'd like you to do is to mark with an X where the bottom of Alonzo's ladder was standing when you began to climb it.

MR. EDELMAN: On that one?

MR. DECARLO: Yes.

1 Daniel Rivera

2 Q. What I want to know is if the
3 bottom of the ladder was here or if it was
4 wedged up against here?

5 MR. EDELMAN: Objection to form.
6 He's asking a question or a mark? There is
7 two different things.

8 MR. DECARLO: Yeah, I'm explaining
9 why I'm asking the question.

10 MR. EDELMAN: So you're just asking
11 him to mark where the bottom of the ladder
12 is?

13 MR. DECARLO: Yes.

14 A. Like a foot away from the wall.

15 MR. EDELMAN: A foot away from the
16 wall on the left side of the page Exhibit
17 G.

18 Q. Let's what I wanted to know. Just
19 put an X where you say a foot from the wall is.

20 MR. DECARLO: Off the record.

21 (Whereupon, at this time, a
22 discussion was held off the record.).

23 Q. When did you start working for
24 Bryan's Home Improvement Corp?

25 A. Seven months before my accident.

1 Daniel Rivera

2 Q. Can you give me an estimate as to
3 how many jobs you worked on before the day of
4 the accident?

5 A. We did a lot of jobs. Two pay days
6 we would do a home or three days. There were
7 houses we would finish in a day. It was a lot.

8 Q. When Alonzo's ladder shifted, did
9 it twist with the top of the ladder remaining
10 tied to the railing?

11 MR. EDELMAN: Objection to the
12 form.

13 A. Yes because it's up there in the
14 process that's when it moved.

15 Q. After the accident happened was
16 Alonzo's ladder still tied to the railing on
17 the flat roof?

18 A. That's what I thought. I thought
19 it was tied because I saw the rope, but it was
20 not well.

21 Q. Did Alonzo's ladder fall when the
22 accident happened?

23 A. No, it only moved.

24 Q. Did it remain on the railing after
25 the accident happened?

1 Daniel Rivera

2 A. Like everything happened in the
3 moment. Yes, I stood there it just moved.

4 Q. When you fell off Alonzo's ladder
5 did you fall on to the flat roof?

6 A. Yes.

7 Q. At the time that you fell off
8 Alonzo's ladder were your feet above, below, or
9 at the same level as the top of the railing
10 that was on the flat roof?

11 A. I was in the process of the
12 railing.

13 Q. Listen to my question. At the time
14 that you fell from Alonzo's ladder were your
15 feet above, below, or at the same level as the
16 top of the railing?

17 A. Same level, but it was in the same
18 level but on top of the sense.

19 Q. I'm asking you about your feet?

20 A. Yes like the step was the ladder
21 was almost at the same level as the fence up
22 top.

23 Q. You said that your feet were at
24 the same level as the top of the railing when
25 you fell from Alonzo's ladder; is that correct?

1 Daniel Rivera

2 MR. EDELMAN: Objection to form.

3 A. Yes because the step was at the
4 same level of the fence.

5 Q. How much of Alonzo's ladder
6 extended above the top of the railing?

7 A. Alonzo's?

8 Q. Yes.

9 A. Approximately four feet or five.

10 Q. Did you suffer any bone fractures
11 as a result of the accident?

12 A. Yes, my knee. I had a lot of
13 movement in the fall that happened with the
14 electric shock everything I suffered damages,
15 pain in the back on my whole left side, my neck
16 was a lot of damages.

17 Q. When you fell from Alonzo's ladder
18 did you fall from the left side or the right
19 hand side of the ladder?

20 A. Left side.

21 MR. DIEUDONNE: Which side is that?

22 THE INTERPRETER: Left side.

23 Q. Did you ever have treatment for
24 your left eye in El Salvador?

25 A. Yes.

1 Daniel Rivera

2 Q. What type of treatment for your
3 left eye did you have in El Salvador?

4 A. Only when the garbage fell in my
5 eye and then they removed it.

6 Q. They removed the garbage?

7 A. Yes.

8 Q. Was that the only time that you
9 treated for your left eye?

10 A. Then when some doctors arrived
11 from Cuba with a candidate he used the word for
12 a party there said there was going to be a
13 doctor from Cuba there and send me to -- he
14 signed me up so that I can have a check up with
15 him.

16 Q. Did you see that doctor?

17 A. Yes, I saw him.

18 Q. Did he give you any treatment or
19 did he just examine your eye?

20 A. He told me that I had -- how do
21 you call this? Cataracts.

22 Q. Aside from examining you did he
23 give you any treatment, did he do anything for
24 the eye?

25 A. He just gave me drops for the

1 Daniel Rivera

2 vision, that's what he told me, that I had
3 70 percent from my vision on my left eye.

4 Q. Did you have any other treatment
5 for eye in El Salvador?

6 A. No.

7 Q. Did you have any treatment for the
8 left eye in the United States before the date
9 of the accident?

10 A. No.

11 MR. EDELMAN: I'm sorry. Any
12 treatment for what?

13 MR. DECARLO: The left eye.

14 Q. Are you left handed or right
15 handed?

16 A. Excuse me?

17 Q. Are you left handed or right
18 handed?

19 A. Right handed.

20 Q. Approximately how much did the
21 second ladder weigh?

22 A. Because it was half of a 32, it
23 didn't weigh too much. It would be like between
24 eight and ten pounds something like that.

25 MR. DECARLO: I have nothing

1 Daniel Rivera

2 further. Thank you.

3 MR. DIEUDONNE: I have no
4 follow-ups.

5 MR. EDELMAN: I have a couple.

6 EXAMINATION BY

7 MR. EDELMAN:

8 Q. I see you have a cane here.

9 A. Yes.

10 Q. Do you use a cane regularly?

11 A. Yes.

12 Q. Which hand do you hold it with?

13 A. Right hand.

14 Q. Why do you use a cane?

15 A. Because I don't have strength in
16 my foot. I have to recharge with my hand. I
17 have to recharge so I could walk.

18 Q. You mean those pains to the left
19 foot you're indicating?

20 A. No.

21 Q. Do you feel any affects from
22 temperature or weather changes on the left side
23 your body?

24 A. Yes. When I don't have this in the
25 knee it gets cold, my knee gets cold.

1 Daniel Rivera

2 Q. When you don't have what, a brace?

3 A. Yes.

4 MR. EDELMAN: Off the record.

5 (Whereupon, at this time, a
6 discussion was held off the record.).

7 Q. Sir, today you're wearing a brace
8 on the leg?

9 A. Yes.

10 Q. Where does it extend to on your
11 left leg?

12 A. The brace?

13 Q. Yes.

14 A. It has a deposit like it ties in
15 the knee ending from here all the way below
16 here.

17 Q. It looks like above the knee to
18 above the ankle?

19 A. Yes.

20 THE INTERPRETER: Do you want him
21 to put it up?

22 MR. DIEUDONNE: If he could.

23 MR. DECARLO: Off the record.

24 (Whereupon, at this time, a
25 discussion was held off the record.).

1 Daniel Rivera

2 Q. Do you ever feel any tingling on
3 the left side of your body?

4 A. All of this is not normal because
5 all my areas the tingling is permanent.

6 MR. EDELMAN: Indicating from his
7 left arm down to his left leg.

8 Q. What does it feel like, is it like
9 ants, sensation, or something else?

10 A. Yes like ants. The doctor tells me
11 that it's possible because of the electric
12 shock.

13 Q. Is your wife primarily handling
14 child care duties for the one year old in your
15 family?

16 A. Yes.

17 Q. How has this accident affected
18 your ability to take care of your children, if
19 at all?

20 A. A lot because before I could carry
21 them not anymore.

22 Q. Sir, I'm sorry. Should I continue?

23 A. Give me a moment please. Let's
24 continue. I'm sorry, but when you remind me of
25 that it affects me a lot.

1 Daniel Rivera

2 Q. I understand. Please take all the
3 time you need.

4 Sir, I noticed throughout the last
5 two days of the deposition that you've been
6 alternating between sitting in your chair and
7 standing as well. Do you find it difficult to
8 sit for too long of a period of time that you
9 need to stand?

10 A. Yes.

11 Q. How regular is that a feeling for
12 you; is that something on a daily basis that
13 you feel that it's hard to sit something else?

14 A. It's always hard.

15 Q. How about sleeping?

16 A. It's the same always at night.

17 Q. Do you wake up from your sleep?

18 A. Yes, when I feel a lot of pain.

19 Q. Are you taking medication to treat
20 for your pain, Sir?

21 A. Yes.

22 Q. Now, you mentioned it about of and
23 upon some observation I see your left leg
24 drags; is that correct?

25 A. Yes.

1 Daniel Rivera

2 Q. Can you discuss that condition?

3 A. Excuse me?

4 Q. Can you discuss the dragging?

5 A. Yes.

6 Q. Is that something that is a daily
7 experience for you?

8 A. Yes because before my accident I
9 never had that.

10 Q. Has any doctor mentioned to you
11 that at some time in the future the dragging
12 condition will stop?

13 A. Yes, he told me to continue
14 therapy, but there is no changes.

15 Q. Sir, I believe you mentioned
16 earlier that you fell approximately seven foot
17 from Alonzo's ladder; is that correct?

18 A. I fell -- excuse me?

19 Q. Approximately seven feet?

20 A. Yes.

21 Q. Now, earlier that morning on the
22 accident date were you working on the right
23 side of the house?

24 A. Yes.

25 Q. When you went to climb up the

1 Daniel Rivera
2 ladder Alonzo had placed was it the first time
3 that you were going to be working on the left
4 side of the house that day?

5 A. Yes.

6 MR. EDELMAN: Thank you. That's the
7 last question I have.

8 MR. DECARLO: I have a few more
9 questions.

10 EXAMINATION BY

11 MR. DECARLO:

12 Q. Sir, as a result of the surgery
13 that you had to your neck do you have any
14 scarring?

15 A. Yes.

16 Q. Can you point out the scarring?

17 A. Right here.

18 MR. EDELMAN: Indicating --

19 A. In the neck.

20 MR. EDELMAN: -- in the front left
21 section of his neck horizontal scar right
22 here.

23 Q. When you fell from Alonzo's lap
24 did you fall on to the flat roof?

25 A. Yes.

1 Daniel Rivera

2 Q. What was the first part of your
3 body that came into contact with the flat roof?

4 A. It was in the moment that's when I
5 fell the feeling of shock in my whole left
6 side.

7 Q. With what part of your body did
8 you first hit the flat roof?

9 A. I fell on my left side this left
10 side.

11 MR. DECARLO: I have nothing
12 further. Thank you.

13 (Whereupon, the deposition
14 concluded at 1:20 p.m.)
15
16

DANIEL RIVERA

17 Signed and subscribed to
18 before me, this _____ day
19 of _____ 2017.

20 Notary Public
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I N D E X O F W I T N E S S E S

EXAMINATION BY	PAGE
MR. DIEUDONNE	6
MR. DECARLO	20, 59
MR. EDELMAN	54

I N D E X O F E X H I B I T S

DESCRIPTION	PAGE
Defendant's Exhibit G PHOTOGRAPH	47

1
2
3
4
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6
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C E R T I F I C A T E
STATE OF NEW YORK)

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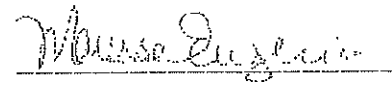
COUNTY OF RICHMOND

I, MARISSA EUGENIO, a Notary Public
within and for the State of New York, do
hereby certify:

THAT DANIEL RIVERA, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by such witness.

I further certify that I am not related
to any of the parties to this action by blood
or marriage; and that I am in no way interested
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set
my hand this 28th of SEPTEMBER 2017.


MARISSA EUGENIO

September 28, 2017

Page 63

A				
a.m 1:15	47:9 59:2	21:14	40:11 51:15	bring 37:13
ability 56:18	Alonzo's 35:2	ARAUJO/EL...	bar 3:12 5:22	39:11
accident 11:18	36:5 37:25	2:18	basis 14:19	Broadway 2:5
13:9,24 16:5	38:2,4,13,14	area 26:6,8	57:12	brought 6:21
16:19,24,25	39:24 40:3,12	28:9,13 31:11	bathing 16:13	Bryan's 1:12
17:5,23 21:15	40:15,24 41:8	42:7,7	bathroom 16:8	2:13 13:10
21:18,19,19	41:10,16	areas 56:5	beams 19:9	20:14 48:24
21:23 23:16	42:21 43:11	arm 8:8 9:8	beans 18:7	build 19:4
24:2,24 25:5	43:13,19,22	12:4,5 56:7	began 31:14	building 29:14
25:12,20	44:2,10,12,15	arrive 25:4	32:13 35:24	29:23 30:20
26:13 27:13	44:22 45:2,5	arrived 25:9,12	36:12 37:10	33:3,14 38:18
27:18,19 28:2	45:9 46:12,16	52:10	40:12 41:8	busy 18:13
28:2,10 33:11	46:21,25	Aside 52:22	42:21 43:12	
34:14 35:19	47:22 49:8,16	asked 17:12	43:22 44:13	C
40:13 48:25	49:21 50:4,8	35:12	44:15,22 45:5	C 2:2,10 6:2
49:4,15,22,25	50:14,25 51:5	asking 48:6,9	45:10 47:23	62:2,2
51:11 53:9	51:7,17 58:17	48:10 50:19	beginning 18:9	C.P.L.R 3:6
56:17 58:8,22	59:23	assistance 15:9	24:15	4:10,16 5:14
accurately 6:5	alternating	15:14,18	begun 4:5	call 18:19 19:9
action 3:14	57:6	attach 19:20	believe 58:15	52:21
5:24 62:14	aluminum 23:3	22:21	belt 22:16	called 6:2,10
activities 17:14	23:7,12,19	attached 23:18	Benefits 14:2	candidate
addition 3:9	ambulance	29:22 30:7	between(am...	52:11
5:20	17:9	31:17,24	3:4,16 4:13	cane 54:8,10,14
additional 10:6	ankle 55:18	32:15 33:2,12	4:19 5:5,12	capacity 17:22
10:13,19	answer 12:2	33:13	bit 12:11	care 39:20
against- 1:6,11	23:22,23 41:7	attorney 16:22	biweekly 13:13	56:14,18
ago 20:3,4	answered	Attorneys 2:5,9	14:8,18 15:4	carry 17:18
AGREED 3:3	11:25 31:20	2:13	block 19:20	56:20
3:15 4:13,19	answering 6:24	August 11:18	blood 62:14	carrying 37:11
5:5,12	answers 6:8 7:3	13:25 16:5	Board 19:25	37:14,19,20
agricultural	ants 56:9,10	17:15 18:10	bodily 12:8	38:5,24 39:2
18:15	anymore 56:21	Avenue 2:14	body 8:5,6	39:9,11,14,24
Alonzo 21:20	apartment	22:19 25:9	12:11 22:12	40:2,4 46:4
24:9 28:8,19	12:24 13:5	32:24	22:15 29:9	cash 13:10,12
28:25 29:11	apply 6:23		34:12 54:23	Castleton 2:14
30:4,17 31:4	appointment	B	56:3 60:3,7	Cataracts
31:15,22	7:9,13,16	B 61:7	bone 51:10	52:21
32:14 33:8,23	8:18 9:9	back 8:16,19	boss 17:23	ceiling 19:11
34:2,15 35:3	appointments	8:24 9:5,7	bottom 28:22	25:15 27:10
35:6,24 36:11	8:15 19:24	10:16,17	33:20 34:20	30:8
36:25 37:10	approximately	18:14 19:13	34:25 47:22	cement 19:21
37:15 38:11	25:3 29:4	22:6 24:6,7	48:3,11	centimeters
39:4,8 40:22	51:9 53:20	24:15,17,20	brace 55:2,7,12	21:10
45:3 46:23	58:16,19	25:7,14 26:9	break 7:7	certain 24:12
	approximation	31:11 37:8	11:20	certification
		38:17,18,19		4:21

September 28, 2017

Page 64

certify 62:8,13	15:20 19:24	37:16 42:9	51:1 52:1	5:16
chair 57:6	compensations	45:22 46:14	53:1 54:1	Depot 1:7,9 2:9
change 16:2	14:5	46:19 50:25	55:1 56:1	6:21 26:5,14
changed 7:15	complain 8:10	57:24 58:17	57:1 58:1	26:17,21
changes 54:22	complained 8:4	counsel 3:4,16	59:1 60:1,16	describe 22:4
58:14	8:9	4:7,13,19 5:5	62:9	46:24
charge 5:9	complaints 8:2	5:8,12 23:23	dark 34:13	DESCRIPTI...
check 10:20	9:2,18	country 18:5	date 1:14 14:14	61:8
13:10 14:5,11	concluded	18:14 19:8	47:18 53:8	Dieudonne
52:14	60:14	COUNTY 62:4	58:22	2:10 6:15,19
checks 14:7,16	condition 58:2	couple 54:5	day 13:18	20:7 35:10
14:22 15:3	58:12	COURT 1:3	21:18,19,21	51:21 54:3
chest 22:9	Conduct 5:16	Cuba 52:11,13	22:18,23,24	55:22 61:4
child 56:14	confuse 6:25,25	cushion 32:6,9	24:2 25:12	different 23:8
children 16:10	connect 23:11	cut 18:24	26:13 27:18	48:7
17:19 56:18	connected 23:6		49:3,7 59:4	difficult 13:2
Civil 1:6	Connors 2:12	D	60:18	35:13 57:7
climb 13:6	2:12 20:14,14	D 42:3 61:2,7	days 10:22,24	diminished
31:15 32:13	construction	D'Amato 2:8	11:2 13:15,17	11:22
37:10 40:3,12	19:12,17	6:20	13:19,20,22	disabled 15:23
47:23 58:25	Cont'd 4:2 5:2	daily 57:12	13:23,23	discuss 58:2,4
climbed 24:13	contact 60:3	58:6	14:10,12 15:6	discussion 20:9
climbing 31:22	contained	damages 51:14	49:5,6 57:5	48:22 55:6,25
38:14 44:9	21:24	51:16	DeCarlo 2:15	DISTRICT 1:3
46:12	CONTINUA...	Daniel 1:4,18	20:11,13	1:3
close 18:16	1:17	6:1,10 7:1 8:1	22:24 23:22	doctor 7:10
closer 33:20,21	continue 10:14	9:1 10:1 11:1	42:8 47:15,25	8:15,19,23
34:20,21,24	56:22,24	12:1 13:1	48:8,13,20	9:10,16,24
34:25	58:13	14:1 15:1	53:13,25	10:4,11,17
co-worker	continued	16:1 17:1	55:23 59:8,11	52:13,16
30:14	22:25	18:1 19:1	60:11 61:5	56:10 58:10
co-workers	continues 12:3	20:1,20,24,25	December	doctors 9:20
30:18	19:10	21:1,2 22:1	14:23 15:3	52:10
cold 54:25,25	continuing	23:1 24:1	deemed 4:8	doing 30:16
Colon 7:16,20	6:18	25:1 26:1	Defendant 1:8	38:20
7:25 8:13	controlled 4:10	27:1 28:1	1:13 2:9,13	domestic 16:6
9:20,22 10:5	Cook 22:18	29:1 30:1	Defendant's	doorman 32:10
10:12,18	25:9 32:24	31:1 32:1	42:2 47:16	Dr 7:10,14,16
12:16 16:4	cooks 16:11	33:1 34:1	61:9	7:20,25 8:13
Colon's 10:25	copy 5:6	35:1 36:1	Defendants	9:20,22 10:5
come 15:6 18:8	corn 18:7	37:1 38:1	1:19	10:12,18,25
28:9	corners 47:10	39:1 40:1	deposit 55:14	12:16 16:4
Comp 14:8,19	Corp 1:12 2:13	41:1 42:1	deposition 6:18	drag 35:12,14
14:22 15:3	20:15 48:24	43:1 44:1	57:5 60:13	dragging 58:4
compensation	correct 24:25	45:1 46:1	62:10,11	58:11
14:2,15 15:8	32:23 33:5	47:1 48:1	Depositions	drags 57:24
		49:1 50:1		

September 28, 2017

Page 65

dress 16:16 driven 21:20 drops 52:25 duly 6:3,11 62:10 duties 56:14 <hr/> E. E 2:2,2 6:2 61:2 61:2,2,7,7 62:2,2 earlier 24:23 58:16,21 EDELMAN 2:6 11:24 22:23 23:20 23:24 27:6,21 28:5 30:10,22 32:17 33:6,17 34:16 35:2,16 36:14 39:3,16 40:6,17 41:12 41:18 42:6,10 43:6,24 44:17 44:23 45:19 46:2,15 47:24 48:5,10,15 49:11 51:2 53:11 54:5,7 55:4 56:6 59:6,18,20 61:5 eight 25:7 53:24 either 10:4 38:15 EI 18:5,6 19:13 51:24 52:3 53:5 electric 29:8 34:11 36:9 37:6 41:5 51:14 56:11 employer 13:10 13:17 ends 19:9 English 6:7,9	7:3 equipment 21:22 25:8,10 25:11,19 26:2 26:10,12,25 ESQ 2:6,10,15 estimate 21:11 49:2 Eugenio 1:22 62:6,20 exactly 21:9,10 42:10 examination 1:17 5:19,22 6:14 20:10 54:6 59:10 61:3 examination(s) 3:9,12,17 4:5 4:7,15,22 5:7 examine 52:19 examined 3:19 6:12 examining 52:22 excuse 32:8 33:22 53:16 58:3,18 Exhibit 42:2,3 47:16,20 48:16 61:9 experience 19:13 58:7 explained 30:17 31:4 32:7 explaining 30:5 48:8 extend 55:10 extended 23:2 25:14 29:19 51:6 extension 24:11 eye 51:24 52:3 52:5,9,19,24	53:3,5,8,13 eyes 17:7 <hr/> F F 61:2,7 62:2 failure 3:10 4:6 5:20 faithfully 6:5 fall 27:16 49:21 50:5 51:13,18 59:24 falling 30:9 34:15 36:7 family 16:7,9 56:15 far 11:22 father 19:4 Federal 15:18 feel 11:3 54:21 56:2,8 57:13 57:18 feeling 57:11 60:5 feet 22:15 24:11 29:5,6 35:7,12,15,25 37:2 41:9,14 42:16 46:8 50:8,15,19,23 51:9 58:19 fell 29:2,5 33:19 34:8,9 34:10,11,19 36:8 37:4,5,6 40:23,25 41:4 41:4 43:20 50:4,7,14,25 51:17 52:4 58:16,18 59:23 60:5,9 felt 29:7 34:11 felted 36:9 fence 28:24 29:4,20 32:8 33:25 34:3,7 34:7,23 35:4 35:5,6 36:4	36:17,19,23 36:25 37:3 40:21 41:21 41:24 42:2,5 42:7,23 43:2 45:7 47:3 50:21 51:4 fifteen 13:15 filing 4:20 fill 16:25 financial 15:8 find 57:7 fine 35:22 finish 6:24 49:7 firm 6:20 20:13 first 6:11 12:22 13:3,5 14:21 20:25 21:21 22:18,24 29:19 33:9 37:9 59:2 60:2,8 five 29:5 35:7 51:9 flat 32:6 36:8 38:16,16,24 39:9,12,12,14 40:4,16 41:4 41:22 42:9,12 42:13,20 43:3 43:8 44:14 45:12,16,24 46:8,19,22 47:5 49:17 50:5,10 59:24 60:3,8 float 47:8 floor 2:5 12:21 12:21 13:3,5 31:10 37:6 41:4,4 follow-ups 54:4 follows 6:13 food 15:11 16:8 foot 8:7,7,10,11 9:8 35:13,17	35:19 48:14 48:15,19 54:16,19 58:16 form 3:7 5:18 23:20 27:7,21 28:6 30:23 32:17 33:7,17 34:17 36:15 39:3,16 40:6 40:18 41:19 43:7,25 44:18 46:3,15 48:5 49:12 51:2 forth 62:10 foundation 23:21 39:17 40:7 four 9:25 18:20 19:6 29:5 35:7 51:9 fractures 51:10 Francesco 21:2 front 32:9 59:20 full 20:20,23 furnished 5:7 further 3:15 4:12,18 5:4 5:11 54:2 60:12 62:13 future 58:11 <hr/> G G 47:16,20 48:17 61:9 Gallardo 1:21 2:4 garbage 52:4,6 getting 15:4,8 15:11,14,17 36:13 Ginarte 1:20 2:4 give 13:18 15:5 21:11,14 49:2 52:18,23
---	--	--	---	--

September 28, 2017

Page 66

56:23	44:6,9,11,16	29:6	Improvement	10:5,7 51:12
given 6:8 62:12	44:21,22 45:4	held 1:20 20:9	1:12 2:13	54:25,25
go 11:2 12:23	45:10,24 46:5	38:9 48:22	20:15 48:24	55:15,17
16:8 20:24	51:19 54:12	55:6,25	including 3:6	know 7:7 8:22
24:9,14 28:12	54:13,16	help 16:6,13,16	5:17	17:8 18:2
28:12,13,13	62:18	19:14,16	indicated 24:23	19:14 20:17
29:25 30:15	handed 53:14	39:19	26:24 44:12	21:10 22:11
30:20 31:3,6	53:15,17,18	helper 19:15,16	indicating	25:25 26:2
31:10 32:4	53:19	helps 12:11	35:16 42:6	27:15 28:21
33:14 37:8	handling 56:13	16:7,9	54:19 56:6	30:4,11 38:7
38:10 39:21	hands 37:21,22	Henry 2:10	59:18	42:18 43:2,21
39:22 40:11	38:12 43:12	6:19	inheritance	48:2,18
45:13	43:15,23 44:4	hereinbefore	19:4	known 21:4
going 7:18	hanging 30:25	62:10	Initially 15:2	
15:25 24:9,10	happen 34:10	hereto 3:5,17	injections	L
30:14,15 32:2	happened	4:14,20 5:6	12:14,17	L 3:2 4:2 5:2
32:4,4 33:4,9	16:20 21:18	5:13	instructions	6:2
37:15,18,23	21:23 27:19	hereunto 62:17	6:22	ladder 23:2
38:2,13 41:6	28:3,10,20	hire 16:6	interested	24:9,13,14,17
47:19 52:12	29:7 33:11	hit 60:8	62:15	24:18 25:13
59:3	34:4 36:5,18	hold 25:24	interpretation	25:21 28:10
Gonzalez 1:21	37:4 40:13,19	38:12 54:12	6:24	28:14,16,17
2:4	40:22,25	holding 28:19	interpreter	28:22,24,25
Good 6:16,17	42:24 43:17	37:24,25 38:3	2:18 6:3,23	29:3,12,18
20:12	43:19 44:7,19	38:8 43:13	7:4 35:8	30:6 31:12,15
Government	45:8 46:11	44:2,6,10,11	36:22 51:22	31:18,22 32:8
15:18	49:15,22,25	home 1:7,9,12	55:20	32:14 33:8,20
grabbed 29:3	50:2 51:13	2:9,13 6:21	interrupt 25:25	33:21,21,22
grabbing 28:16	hard 57:13,14	11:3 12:20	involve 34:14	33:23,25 34:4
28:18 44:24	harness 22:2,4	18:4,14 20:14	Island 2:14	34:5,8,15,19
47:10	22:5,7,8,10	26:5,14,17,21		34:20,21,25
great 17:24	22:11,13,14	48:24 49:6	J	35:2,3,5,23
ground 12:21	22:17,21 23:7	horizontal	J 6:2	36:2,3,5,6,11
29:16 30:21	23:8,11,14,15	59:21	Jersey 15:9,12	36:13,17,19
31:7 38:19	25:16 26:19	hospital 17:8	15:15	36:24,25 37:2
grow 18:7	27:14,20,25	17:11	job 17:21 21:23	37:4,9,11,11
	28:3,4 29:22	hour 11:7	22:3,18 25:4	37:12,14,15
H	29:24 30:7,11	house 58:23	25:19 26:22	37:17,18,20
H 61:7	31:2,6,10,16	59:4	27:12 28:9	37:25 38:3,3
half 24:11	31:23 32:3,15	houses 24:12	39:18,20	38:4,6,8,10
53:22	32:18,20,20	49:7	jobs 49:3,5	38:10,13,15
hand 28:16,18	32:25 33:12	hugging 47:9	JR 2:10	38:23,25 39:8
28:19 29:4	33:16			39:10,14,21
34:9,9 37:5	harvest 18:12	I	K	39:22,24,24
37:20,23 38:4	hear 20:15	identification	keep 7:3 18:13	40:2,3,4,12
38:5,6,9 41:3	height 21:7	47:17	knee 9:10,17	40:15,21,24
41:16 43:15		identify 26:21	9:21,24 10:4	41:3,8,10,15

September 28, 2017

Page 67

41:15,16,20	45:4,10,17,21	Marissa 1:22	monthly 13:14	15:9,12,15
41:24 42:11	45:24,25 46:5	62:6,20	14:8	38:20,21 62:3
42:13,14,19	48:16 51:15	mark 47:15,21	months 9:25	62:7
42:20,21,23	51:18,20,22	48:6,11	48:25	night 57:16
43:2,3,4,10	51:24 52:3,9	marked 41:25	morning 6:16	normal 22:11
43:11,14,18	53:3,8,13,14	47:17,20	6:17 20:12	30:11 56:4
43:20,22 44:3	53:17 54:18	marriage 62:15	24:5,8 25:4,6	Notary 1:22
44:9,10,11,13	54:22 55:11	Martinez 20:21	25:17,20 27:9	3:19 4:4 6:4
44:14,15,20	56:3,7,7	21:3	28:2 32:19	6:11 60:20
44:22,25 45:2	57:23 59:3,20	materials 26:5	58:21	62:6
45:5,7,10,11	60:5,9,9	matter 6:3	mornings	noticed 57:4
45:16,17,18	leg 55:8,11	62:16	27:24	
45:23,25 46:8	56:7 57:23	mean 13:21	motion 3:13	O
46:9,11,13,13	legs 40:15	18:18,22	5:23	O 3:2 4:2 5:2
46:14,16,17	42:19	54:18	move 3:7,11	6:2 42:2 61:2
46:19,21,25	Let's 47:15	medication	5:18,21 12:4	61:7
47:3,4,7,22	48:18 56:23	57:19	12:4,11 35:24	O'Dwyer 1:20
48:3,11 49:8	level 34:7 35:5	mention 27:4	36:12 43:12	2:4
49:9,16,21	50:9,15,17,18	mentioned	43:22 44:16	object 3:6,10
50:4,8,14,20	50:21,24 51:4	22:2 27:2,2,3	44:22 46:5	5:17,20
50:25 51:5,17	Liberty 2:9	57:22 58:10	moved 29:2	objection 11:24
51:19 53:21	limits 17:22	58:15	34:4,6,18	23:20,24 27:6
58:17 59:2	Listen 50:13	mess 35:14	36:5,19 37:5	27:21 28:5
ladders 26:10	little 12:4,11	Michael 2:6,15	40:24 43:10	30:10,22
27:2,4 33:5	live 12:20	20:13	43:20 49:14	32:17 33:6,17
33:14	LLP 1:21 2:4,8	middle 24:12	49:23 50:3	34:16 36:15
lap 59:23	lock 22:6,6	38:9 45:19	movement	39:3,16 40:6
lawsuit 6:22	23:5,8,12,19	mix 19:20,21	51:13	40:17 41:18
leaned 42:11	30:13	mixing 19:18		43:6,24 44:17
44:13	locked 23:7	19:19	N	44:23 46:2,15
leaning 42:14	30:19,25 33:3	moment 11:10	N 2:2 3:2 4:2	48:5 49:11
43:4 45:12	long 11:5,8	11:19 12:18	5:2 61:2,2,7	51:2
leave 26:8	15:25 57:8	18:2 20:2,5	name 6:19	observation
leaving 18:4	longer 17:16	28:7,11,20	17:13 20:12	57:23
left 8:6,7,7,11	look 13:3 19:6	34:5,10 36:4	20:20,23 21:2	occupy 19:3
9:10,17,24	looks 55:17	36:18 37:4	names 21:5	38:12
10:3,5,7 12:6	lot 11:3 19:5	40:19,23,25	near 41:25	occurred 24:24
19:4 24:5,11	49:5,7 51:12	42:22,24	neck 7:11 9:7	office 10:25
28:11,16 29:3	51:16 56:20	43:16,17,19	10:13 51:15	offices 1:20
29:4,8 34:8,9	56:25 57:18	44:7,20 45:8	59:13,19,21	Okay 7:5,8
34:12,12	lunch 24:25	47:13 50:3	need 7:7 10:6	20:19
35:16,19 36:7	Lynch 2:8 6:20	56:23 60:4	10:13,18	old 27:17 56:14
36:10 37:5,23		month 7:23,24	16:16 57:3,9	opened 17:7
38:6,9 41:2,3	M	8:21,25 9:14	never 18:2 58:9	operated 9:21
41:15 42:4	M 6:2	9:14,21 20:3	new 1:3,21,23	Order 1:20
43:15 44:10	MARCIAL	20:4	2:6,6,10,10	original 4:6,21
	2:18		2:14 6:4,12	outcome 62:16

September 28, 2017

Page 68

outside 42:16	permanent	process 10:8	45:23 46:7,18	record 20:7,9
overall 11:8,23	56:5	11:14 13:22		24:21 48:20
12:7	permanently	15:24 24:4	Q	48:22 55:4,6
P	15:22	28:23 30:16	question 3:7,10	55:23,25
P 2:2,2,15 3:2	person 17:10	32:2,5,21	5:17,21 7:6	62:12
4:2 5:2	photograph	33:24 34:5,22	13:4 20:15,16	reduced 12:8
P.C 2:12	47:17 61:9	35:4 36:13,16	24:19 31:21	referring 41:25
p.m 60:14	photos 16:23	37:3 40:20	31:21 39:17	regiment 11:6
page 48:16	physical 11:5,9	43:9,18 44:5	41:7,7 47:6	11:12,22
61:3,8	11:12,17,21	45:6,11 46:10	48:6,9 50:13	regular 57:11
paid 13:9,13,16	12:7 17:18	46:17,18	59:7	regularly 54:10
pain 8:3,4 9:4,5	physicians	49:14 50:11	questions 6:6	related 62:13
9:5,7 11:3,23	15:22	propounded	59:9	remain 49:24
12:3,8,12	pillow 32:5	6:6	R	remained 31:8
51:15 57:18	place 24:12	protect 27:15	R 2:2 6:2,2	remaining 49:9
57:20	31:9	provided 3:5	62:2	remember 7:15
pains 54:18	placed 32:14	4:9,16 5:14	rail 42:12	7:17,22 10:2
paper 26:6	59:2	Public 1:22	railing 40:16	17:12,13 20:3
part 5:14 8:5	places 20:25	3:19 4:4 6:4	41:25 42:8,15	21:9 29:9
22:12 24:6,7	placing 45:11	6:11 60:20	42:17 43:5	40:20,23
24:16 26:7,9	45:15	62:6	44:14 45:12	remind 56:24
42:12,14 43:3	Plaintiff 1:5,10	pull 38:23	46:22,25 47:5	remove 26:7
46:24 60:2,7	1:18 2:5	39:13 40:3	47:8 49:10,16	31:2,5
parties 3:5,17	plant 18:9	purpose 19:2	49:24 50:9,12	removed 30:19
4:14,20 5:6	plants 18:8	Purposes 4:16	50:16,24 51:6	52:5,6
5:13 62:14	please 7:3	pursuant 1:19	Ratzker 7:10	rental 15:14
party 52:12	11:19 24:20	put 19:10 22:15	7:14	repeat 20:17
passed 8:25	56:23 57:2	23:5 24:13,18	reach 12:24	47:6
9:21	pocket 22:14	28:15,17,19	40:14	rephrase 20:17
passing 36:4	point 16:24	28:22,24,25	reached 24:7	report 16:25
40:20	17:5 37:9	29:19 30:24	read 24:19,21	Reporter 47:18
pay 13:22 49:5	40:14 59:16	32:5,7,19	ready 35:21	represent 6:20
payment 13:19	police 17:2,4,9	33:9,22,23	40:14	20:14
pending 7:9	possible 38:22	34:2,5 35:3,6	reason 16:21	represented
8:14 9:9	39:10 56:11	36:17 38:11	39:23,25	26:17
19:23	possibly 12:15	39:4,5,22	40:10	representing
people 26:9	24:10	40:15,22	recall 27:3	5:8
percent 53:3	pounds 53:24	41:20,23 42:5	receive 13:19	requested
perform 17:15	prefer 17:24	42:23,25	14:7,22	24:22
17:16	present 2:16	44:20 45:6	received 11:22	reserved 3:9,13
performed	11:18 21:7,12	46:11,23	13:25 14:4	5:19,23
7:11 8:15,19	pretty 11:16	47:11 48:19	receiving 11:17	respect 10:3,16
8:24 9:10,17	prevented 30:8	55:21	12:13,17	respective 3:4
9:24 10:5,12	primarily	puts 32:9	14:15 15:3	3:16 4:14,20
10:17	56:13	putting 29:18	recharge 54:16	5:6,13
period 57:8	problem 35:18	33:24 43:9,18	54:17	rest 17:13 24:8

September 28, 2017

Page 69

43:4,8	49:1 50:1	51:24 52:3	48:25 58:16	56:22,24
result 35:19	51:1 52:1	53:5	58:19	sort 15:17
51:11 59:12	53:1 54:1	sand 19:21	shift 41:9 42:21	SOUTHERN
results 36:2	55:1 56:1	saw 7:19,25	44:13 45:5,10	1:3
resume 35:21	57:1 58:1	8:12 9:3,16	shifted 41:16	Spanish 6:7,8
return 4:6	59:1 60:1;16	9:23 49:19	46:13 49:8	7:3
16:19	62:9	52:17	shock 29:8,8	speak 7:2 14:14
RICHMOND	roof 23:2,11,18	saying 32:12,12	34:11 36:9	17:4
62:4	27:17 33:16	scar 59:21	37:7 41:5	speaking 29:17
right 3:6 5:17	33:18 34:2	scarring 59:14	51:14 56:12	30:4
24:6 28:18	36:8,9 38:16	59:16	60:5	special 23:4,13
29:2 35:25	38:16,16,24	screw 23:4	shoes 35:14	spoke 17:7
37:24,24 38:4	39:9,12,12,13	second 12:21	shortly 11:17	29:11,21
38:5 40:13,24	39:15 40:5,16	25:24 28:17	shovel 27:2,5,8	stamps 15:11
41:17 44:6,9	41:22 42:9,12	28:24 33:25	show 47:19	stand 35:22
44:16,21,22	42:13,20 43:3	36:6,17 37:13	showed 28:10	57:9
45:14,17	43:8 44:15	37:18 38:8	showering	standing 34:6
51:18 53:14	45:12,16,24	39:21 41:2,21	16:14	40:21 46:14
53:17,19	46:8,19,22	41:24 42:11	side 8:6 24:6,6	47:22 57:7
54:13 58:22	47:5,8 49:17	42:14,19,19	24:16 29:2,3	start 14:21
59:17,21	50:5,10 59:24	43:2 44:11,13	29:9 34:9,12	48:23
rights 3:5 4:8	60:3,8	45:11,15,23	36:7,10 37:5	started 15:2
5:13	roofing 38:21	46:7,19 53:21	40:24 41:2	24:5 25:6
Rivera 1:4,18	roofs 29:13	section 59:21	42:4 45:17,17	State 1:23 6:4
6:1,10,16 7:1	room 18:19	secure 34:3	45:21,25 46:6	6:12 15:9,12
8:1 9:1 10:1	rope 23:10	39:5,6	48:16 51:15	15:15 62:3,7
11:1 12:1	27:11,14 28:3	secured 30:12	51:18,19,20	Staten 2:14
13:1 14:1	30:12,13,14	47:11	51:21,22	States 1:3 53:8
15:1 16:1	30:19,24 31:6	see 8:20,23	54:22 56:3	step 12:23
17:1 18:1	31:8,16,24	9:22,22 34:13	58:23 59:4	40:14 47:2,10
19:1 20:1,12	32:3,15,20,25	52:16 54:8	60:6,9,10	50:20 51:3
20:20,24,25	33:3,12,13	57:23	signed 52:14	steps 12:24
21:1,2 22:1	34:2 38:25	seen 8:20 9:19	60:17	13:6
23:1 24:1,23	39:5,10,11	send 17:25	Sir 35:23 55:7	steroid 12:13
25:1 26:1	40:2,10 46:22	52:13	56:22 57:4,20	12:17
27:1 28:1	46:23 49:19	sensation 56:9	58:15 59:12	STIPULATED
29:1 30:1	ropes 40:8	sense 50:18	sit 57:8,13	3:3,15 4:12
31:1 32:1	Rules 4:9 5:16	September	site 16:20 21:17	4:18 5:4,11
33:1 34:1	run 46:9,14	1:14 62:18	25:12,19 26:3	stood 50:3
35:1,18 36:1	rungs 47:4,7	set 13:6 29:13	26:25	stop 11:11,12
37:1,8 38:1		31:15 34:15	sites 19:17	58:12
39:1,7 40:1	S	35:24 36:12	sitting 57:6	stopped 36:22
41:1,6 42:1	S 2:2 3:2,2 4:2	37:10,16	sleep 57:17	street 2:9 12:25
43:1 44:1	4:2 5:2,2 61:2	62:10,17	sleeping 57:15	13:5
45:1 46:1	61:2,2,7	setting 30:6	soon 7:18 8:21	strength 35:13
47:1,19 48:1	Salvador 18:5	seven 29:6	sorry 53:11	54:15
	18:6 19:13			

September 28, 2017

Page 70

strike 3:8,11 5:18,21 strip 24:7 subscribed 60:17 suffer 51:10 suffered 51:14 supplied 26:13 Supposedly 39:4 sure 20:6 31:20 32:11 35:10 47:14 surface 32:6 surgery 7:11 8:16,19,24 9:11,17,24 10:5,6,12,13 10:18,19 59:12 sworn 3:18 6:3 6:11 62:11	Thank 54:2 59:6 60:12 therapy 10:9 10:15,21,23 11:4,6,9,12 11:17,21 12:8 58:14 thing 12:10 15:19 23:7 32:7 things 16:8 18:8 22:3 48:7 think 14:23 20:3 Third-Party 1:10,13 this(these) 3:8 3:11,17 4:4 4:14,21 thought 47:11 49:18,18 three 10:24 42:16 49:6 throw 30:14 tie 22:7 39:10 tied 27:14 28:3 28:4,8,23 34:2 38:25 39:25 46:21 46:25 47:2,5 47:8,9 49:10 49:16,19 ties 55:14 time 1:15 7:19 8:12 9:23 11:14 13:8 19:15 20:8 21:15 23:16 24:24,25 25:3 27:22 31:14 32:13 33:9,19 35:23 36:6 40:12 42:20 43:11 44:12 44:15 45:5,9	48:21 50:7,13 52:8 55:5,24 57:3,8 58:11 59:2 tingling 8:7 56:2,5 today 6:19 55:7 told 10:4,9,11 10:17 11:13 12:16 15:21 15:24 16:3 17:6 24:9,18 28:8,13,14 29:11,24 31:12,12,22 37:12,17 41:11 43:18 44:5 45:7 52:20 53:2 58:13 top 23:3,4,11 23:18 27:8,9 28:8 30:19 32:5 33:3,13 33:21 34:21 34:24 36:3 40:9 47:3 49:9 50:9,16 50:18,22,24 51:6 translate 6:6 travel 21:17 treat 57:19 treated 52:9 treating 15:22 treatment 51:23 52:2,18 52:23 53:4,7 53:12 tree 18:16 trees 18:24 trial 1:18 3:14 5:24 true 32:16 62:11 trust 28:21	trusted 28:21 trying 18:21 turn 6:25 twist 49:9 two 18:20 19:6 24:12 35:25 37:20,22 41:14 43:12 48:7 49:5 57:5 type 18:5 26:16 52:2	W W 61:2 waived 4:23 waiver 3:12 4:8 5:22 wake 57:17 walk 26:9 35:14 54:17 wall 19:9 48:14 48:16,19 want 16:7 25:18,23,25 26:2 30:3 32:11 35:22 37:8 40:11 41:7 42:18 43:2,21 48:2 55:20 wanted 29:12 30:5,18 31:5 31:23 48:18 water 35:9 way 25:15 55:15 62:15 We'll 18:19 we're 9:14 wear 22:13 25:16 32:25 33:12 wearing 27:19 29:22 30:7 31:16,23 32:14 55:7 wears 30:12 weather 54:22 wedged 48:4 week 10:24 15:5 weekly 10:22 13:13 14:8,10 weigh 21:16 53:21,23 weighed 21:13 weight 21:8,12 21:15 went 16:22
T T 3:2,2 4:2,2 5:2,2 61:2,7 62:2,2 take 16:23 18:11 28:14 31:9,12,13 40:10 56:18 57:2 taken 1:19 11:20 26:5 talk 17:10 talking 39:7,8 tell 25:18,23 tells 56:10 temperature 54:22 ten 53:24 terms 14:5 testified 6:13 Testifying 5:9 testimony 3:8 3:11 5:19,21 62:12			U U 3:2 4:2 5:2 6:2 U.S.A 1:7,9 understand 7:2 18:21 20:16 20:18,18 30:3 32:12 38:7 42:25 44:8 57:2 undressing 16:17 Uniform 5:16 United 1:3 53:8 unload 25:8 ups 10:20 use 19:5,7,8 20:23 22:11 22:17 23:13 24:10,17 25:22 27:9,23 29:12,25 31:19,23 32:3 32:4,20 37:22 38:11 54:10 54:14 utilized 4:15	V van 21:20,24 21:25 25:9 vest 26:15,16 26:17,18,20 vision 53:2,3

September 28, 2017

Page 71

20:2,4 26:9	Y	22 11:18 13:25		
28:15,16	Yeah 48:8	16:5 17:15		
58:25	year 14:24	221 5:14		
WHEREOF	18:11 56:14	225 2:5,9		
62:17	yesterday 6:23	27th 7:17,21		
wife 16:10,11	11:25 17:6	28 1:14		
56:13	26:24 32:7	28th 7:21 62:18		
Winograd 1:21	Yonkers 13:9			
2:4	16:20	3		
winter 18:10	York 1:3,21,23	3116 4:9		
18:12	2:6,6,10,10	3117 4:9		
witness 6:7,8	2:14 6:5,12	32 24:11 53:22		
6:10 62:9,12	62:3,7			
62:17	Z	4		
witness(es)		47 61:9		
3:18 5:8	0			
woke 17:6	1	5		
wood 18:17	1,200 14:20	533 15:5		
19:5,7	1:20 60:14	54 61:5		
word 52:11	10:58 1:15	58 22:18 25:9		
wore 22:8	10007 2:6	32:24		
33:16	10281 2:10			
work 14:19,22	10310 2:14	6		
15:3 18:5,15	11 13:23	6 61:4		
22:25 24:5	12 13:20,23	7		
27:14,16	24:10	70 53:3		
31:12 32:9	13th 2:5	766 2:14		
33:18	15 13:17,19,20			
worked 49:3	13:22 14:10			
worker 17:24	14:12 15:6			
26:6 30:25	150 21:16			
Worker's	16 24:11			
13:25 14:8,15	165 21:10			
15:7 19:24	16cv7552 1:7			
workers 38:15	180 13:18			
38:23 39:13	2			
working 18:13	2,160 13:19			
22:7 25:7	20,59 61:5			
32:22,24 33:4	2015 11:18			
33:15 48:23	13:25 14:25			
58:22 59:3	15:4 16:6			
would've 30:8	17:15			
X	2017 1:14			
x 1:4,9,14	60:18 62:18			
47:21 48:19				
61:2,7,7				

